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7  
8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues Against:

Case No. *2009-156*

11 MARISA LEE BRIGGS  
12 40408 Argyle Lane  
Palmdale, CA 93551  
13 Registered Nursing License

**STATEMENT OF ISSUES**

14 Respondent.

15  
16 Complainant alleges:

17 PARTIES

18 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Statement of  
19 Issues solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
20 Department of Consumer Affairs.

21 2. On or about April 28, 2008, the Board of Registered Nursing, Department  
22 of Consumer Affairs received an application for a Registered Nursing License from Marisa Lee  
23 Briggs (Respondent). On or about April 25, 2008, Marisa Lee Briggs certified under penalty of  
24 perjury to the truthfulness of all statements, answers, and representations in the application. The  
25 Board denied the application on June 10, 2008.

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1           7.       Section 118 of the Code states:

2           “(a) The withdrawal of an application for a license after it has been filed with a  
3 board in the department shall not, unless the board has consented in writing to such withdrawal,  
4 deprive the board of its authority to institute or continue a proceeding against the applicant for the  
5 denial of the license upon any ground provided by law or to enter an order denying the license  
6 upon any such ground.

7           “(c) As used in this section, ‘board’ includes an individual who is authorized by  
8 any provision of this code to issue, suspend, or revoke a license, and ‘license’ includes  
9 ‘certificate,’ ‘registration,’ and ‘permit.’”

10          8.       Section 475 of the Code states:

11          “(a) Notwithstanding any other provisions of this code, the provisions of this  
12 division shall govern the denial of licenses on the grounds of:

13               “(2) Conviction of a crime.

14               “(4) Commission of any act which, if done by a licentiate of the business or  
15 profession in question, would be grounds for suspension or revocation of license.

16          “(b) Notwithstanding any other provisions of this code, the provisions of this  
17 division shall govern the suspension and revocation of licenses on grounds specified in paragraphs  
18 (1) and (2) of subdivision (a) .

19          “(c) A license shall not be denied, suspended, or revoked on the grounds of a lack  
20 of good moral character or any similar ground relating to an applicant's character, reputation,  
21 personality, or habits.”

22          9.       Section 477 of the Code states:

23               As used in this division:

24               “(a) “Board” includes “bureau,” “commission,” “committee,” “department,”  
25 “division,” “examining committee,” “program,” and “agency.”

26               “(b) “License” includes certificate, registration or other means to engage in a  
27 business or profession regulated by this code.”

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1           10.     Section 480 of the Code states:

2           “(a) A board may deny a license regulated by this code on the grounds that the  
3 applicant has one of the following:

4           “(1) Been convicted of a crime. A conviction within the meaning of this section  
5 means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action  
6 which a board is permitted to take following the establishment of a conviction may be taken when  
7 the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or  
8 when an order granting probation is made suspending the imposition of sentence, irrespective of a  
9 subsequent order under the provisions of Section 1203.4 of the Penal Code.

10          “(3) Done any act which if done by a licentiate of the business or profession in  
11 question, would be grounds for suspension or revocation of license.

12          “The board may deny a license pursuant to this subdivision only if the crime or act  
13 is substantially related to the qualifications, functions or duties of the business or profession for  
14 which application is made.

15          “(b) Notwithstanding any other provision of this code, no person shall be denied a  
16 license solely on the basis that he has been convicted of a felony if he has obtained a certificate of  
17 rehabilitation under Section 4852.01 and following of the Penal Code or that he has been  
18 convicted of a misdemeanor if he has met all applicable requirements of the criteria of  
19 rehabilitation developed by the board to evaluate the rehabilitation of a person when considering  
20 the denial of a license under subdivision (a) of Section 482.

21           11.     Section 482 of the Code states:

22           “Each board under the provisions of this code shall develop criteria to evaluate the  
23 rehabilitation of a person when:

24           “(a) Considering the denial of a license by the board under Section 480; or

25           “(b) Considering suspension or revocation of a license under Section 490.

26           “Each board shall take into account all competent evidence of rehabilitation  
27 furnished by the applicant or licensee.”

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1                   12.     Section 490 of the Code states:

2                   "(a) In addition to any other action that a board is permitted to take against a  
3 licensee, a board may suspend or revoke a license on the ground that the licensee has been  
4 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties  
5 of the business or profession for which the license was issued.

6                   "(b) Notwithstanding any other provision of law, a board may exercise any  
7 authority to discipline a licensee for conviction of a crime that is independent of the authority  
8 granted under subdivision (a) only if the crime is substantially related to the qualifications,  
9 functions, or duties of the business or profession for which the licensee's license was issued.

10                  "(c) A conviction within the meaning of this section means a plea or verdict of  
11 guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to  
12 take following the establishment of a conviction may be taken when the time for appeal has  
13 elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting  
14 probation is made suspending the imposition of sentence, irrespective of a subsequent order under  
15 the provisions of Section 1203.4 of the Penal Code.

16                  "(d) The Legislature hereby finds and declares that the application of this section  
17 has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142  
18 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and  
19 regulations in question, resulting in potential harm to the consumers of California from licensees  
20 who have been convicted of crimes. Therefore, the Legislature finds and declares that this section  
21 establishes an independent basis for a board to impose discipline upon a licensee, and that the  
22 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not  
23 constitute a change to, but rather are declaratory of, existing law."

24                   13.     Section 492 of the Code states:

25                  "Notwithstanding any other provision of law, successful completion of any diversion  
26 program under the Penal Code, or successful completion of an alcohol and drug problem  
27 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of  
28 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2

1 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that  
2 division, from taking disciplinary action against a licensee or from denying a license for  
3 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
4 record pertaining to an arrest.

5 "This section shall not be construed to apply to any drug diversion program operated by  
6 any agency established under Division 2 (commencing with Section 500) of this code, or any  
7 initiative act referred to in that division."

8 14. Section 493 of the Code states:

9 "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
10 the department pursuant to law to deny an application for a license or to suspend or revoke a  
11 license or otherwise take disciplinary action against a person who holds a license, upon the ground  
12 that the applicant or the licensee has been convicted of a crime substantially related to the  
13 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
14 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
15 and the board may inquire into the circumstances surrounding the commission of the crime in  
16 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
17 qualifications, functions, and duties of the licensee in question.

18 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
19 'registration.'

#### 20 CAUSE FOR DENIAL OF APPLICATION

21 (Unprofessional Conduct - Conviction of a Crime)

22 15. Respondent's application is subject to denial under sections 475, 480(a),(3),  
23 in conjunction with California Code of Regulations, Title 16, section 1444, in that on or about  
24 June 11, 2007, in a criminal proceeding entitled *People v. Marisa Lee Briggs* in Los Angeles  
25 Superior Court, Case Number 7AV05082, Respondent was convicted by plea of nolo contendere  
26 of violating Vehicle Code section 23152(b), Driving Under the Influence of Alcohol, a  
27 misdemeanor. The circumstances are as follows:

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1                   a.       On or about April 10, 2007, Respondent was involved in a motor  
2 vehicle accident while driving under the influence of alcohol. Respondent, who was alone in her  
3 vehicle at the time, fell asleep at the wheel and subsequently collided with an inanimate object.  
4 She was unconscious when paramedics arrived at the scene of the accident. Thereafter she was  
5 taken to the hospital by ambulance, at which time it was determined that she had sustained only  
6 minor injuries in the accident. A blood test was administered to Respondent at the hospital and  
7 she was found to have a blood alcohol concentration ("BAC") percentage of .20 at that time.  
8 Thereafter, on June 11, 2007, Respondent entered a plea of nolo contendere and was thereby  
9 convicted of violating Vehicle Code section 23152(a), Driving Under the Influence of Alcohol, a  
10 misdemeanor. A conviction of such crime is of a nature and type that is considered substantially  
11 related to the qualifications, functions and duties of a Registered Nurse.

12                   b.       On or about June 11, 2007, Respondent was sentenced as follows:  
13 Three (3) years of Court-supervised probation under the following terms and conditions: Three (3)  
14 days in county jail, with credit for one (1) day served; a fine of 1,648.00; suspension of driver's  
15 license until completion of a nine (9) month licensed traffic alcohol education program;  
16 completion of a hospital and morgue program; and prohibited from driving a motor vehicle with  
17 any measurable amount of alcohol in system during probation period.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 4 1. Denying the application of Marisa Lee Briggs for a Registered Nursing  
5 License;  
6 2. Taking such other and further action as deemed necessary and proper.

7  
8 DATED: 11 26 09

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11 RUTH ANN TERRY, M.P.H., R.N.  
12 Executive Officer  
13 Board of Registered Nursing  
14 Department of Consumer Affairs  
15 State of California  
16 Complainant

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